IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.	:	**CIVIL ACTION**
	:	**NO. 05-CV-1156**
v.	:	
BRIAN D. ROSENTHAL	:	

MEMORANDUM AND ORDER

Kauffman, J. **January 20, 2006**

State Farm Mutual Automobile Insurance Co. ("Plaintiff" or "State Farm") seeks a declaratory judgment that Brian D. Rosenthal's ("Defendant's" or "Rosenthal's") claim for underinsured motorist ("UIM") benefits is time-barred.[1] Now before the Court are Defendant's Motion to Dismiss, which has been converted to a Motion for Summary Judgment,[2] and Plaintiff's Cross-Motion for Summary Judgment. For the reasons that follow, the Court will grant Defendant's Motion and deny Plaintiff's Motion.

I. Background

[1] Jurisdiction in this matter arises under 28 U.S.C. § 1332. State Farm is an Illinois corporation maintaining its principal place of business in Bloomington, IL. Complaint ¶ 1. Rosenthal is a citizen and resident of the Commonwealth of Pennsylvania. Id. ¶ 2.

[2] Fed. R. Civ. P. 12(b) provides that if, on a motion to dismiss for failure to state a claim, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Here, the Court considered matters outside the pleading that Defendant submitted in his motion to dismiss, including correspondence between the parties and expert reports. In addition, both parties were given a reasonable opportunity to present all pertinent materials after Plaintiff, in its response to Defendant's motion to dismiss, argued that Defendant's motion should be treated as one for summary judgment and then filed a cross-motion for summary judgment.

On June 6, 1998, Rosenthal was involved in a motor vehicle accident in Montgomery County, Pennsylvania, when a vehicle driven by Loma Cashion ("Cashion") struck his car. Complaint ¶ 5. At the time of the accident, Rosenthal was insured by State Farm under policies that provided coverage for, among other things, injuries and damages caused by underinsured motorists.[3] Id. ¶ 4. Rosenthal filed a claim against Cashion for injuries and damages allegedly sustained as a result of the accident. Id. ¶ 7. Cashion was insured under a policy that provided $100,000 per person in liability coverage. Id. ¶ 6. In August 1999, Rosenthal obtained a report from a vocational specialist concluding that, as a result of an earlier accident in March 1998 and the accident involving Cashion in June 1998, Rosenthal sustained a loss of earning capacity in excess of $2,000,000 and a report from an economist who calculated his loss of wages to be in excess of $1,000,000. Id. ¶¶ 8-9.

Rosenthal's claim against Cashion ultimately settled on July 9, 2003 for $85,000. Def.'s Mem. Supp. Dismiss Ex. B. On August 14, 2003, State Farm consented to the settlement. Id. Ex. C. Through letters from July 22, 2003 to July 9, 2004, State Farm corresponded with Rosenthal and requested medical documentation and updates. Id. Ex. D. By letter dated July 22, 2004, Rosenthal's counsel demanded an UIM arbitration and requested that State Farm appoint an arbitrator. Id. Ex. E. The sole response to this demand was State Farm's Complaint filed on March 11, 2005, seeking a declaratory judgment that Rosenthal's UIM claim was time-barred. On May 10, 2005, Rosenthal filed a motion to dismiss, arguing that the applicable statute of

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[3] Neither party has submitted the insurance policy between State Farm and Rosenthal.

Under the terms of the policy, a vehicle is deemed underinsured if the available limits of coverage for bodily injury liability are less than the amount of the insured's damages. Id. ¶ 10.

limitations period had not yet run. State Farm filed a response and a cross-motion for summary judgment on May 26, 2005.

II. Legal Standard

In deciding a motion for summary judgment pursuant to Fed. R. Civ. P. 56, the test is "whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party's favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)). However, "there can be 'no genuine issue as to any material fact' . . . [where the non-moving party's] complete failure of proof concerning an essential element of [its] case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The party moving for summary judgment bears the initial burden of showing the basis for its motion. See Shields v. Zuccarini, 254 F.3d 476, 481 (3d. Cir. 2001). If the movant meets that burden, the onus then "shifts to the non-moving party to set forth specific facts showing the existence of [a genuine issue of material fact] for trial." Id. (citing Fed. R. Civ. P. 56(e)).

III. Analysis

State Farm seeks a declaratory judgment that Rosenthal's claim for UIM benefits arising

from a June 6, 1998 automobile accident is time-barred. The statute of limitations for an underinsured motorist claim, which is an action based on contract, is four years. See 42 Pa. Cons. Stat. Ann. § 5525(a)(8); Motorist Mutual Ins. Co. v. Conklin, No. 04-3232, 2005 U.S. Dist. LEXIS 33752, *7 n.10 (E.D. Pa. Dec. 20, 2005); Wheeler v. Nationwide Mut. Ins. Co., 749 F. Supp. 660, 662 (E.D. Pa. 1990); Boyle v. State Farm Mut. Auto. Ins. Co., 456 A.2d 156, 159-60 (Pa. 1983). The issue presented is when did the statute of limitations period for Rosenthal's UIM claim begin to run.

Generally, a statute of limitations begins to run when the cause of action accrues. 42 Pa. Cons. Stat. Ann. § 5502. Here, the possibilities are (1) when the right to UIM benefits vests, see Wheeler, 749 F. Supp. at 662, or (2) when there is a breach of contract, see Motorist Mutual, 2005 U.S. Dist. LEXIS 337532 at *10-12. Neither the Pennsylvania Supreme Court nor the Third Circuit interpreting Pennsylvania law has directly ruled on the issue of when a cause of action for UIM benefits accrues.

Until recently, courts have followed the approach set forth in Wheeler – that the cause of action for UIM benefits begins to run when the right to UIM benefits vests.[4] However, in

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[4] Under this approach, the insured must establish that (1) the insured was in a motor vehicle accident; (2) the insured was injured as a result of that accident; and (3) the insured knows that the tortfeasor was an underinsured motorist. Wheeler, 749 F. Supp. at 662; Buhl v. Allstate Ins. Co., 46 Pa. D. & C. 4th 219, 223 (2000). In Wheeler, the court held that the third prong is met when settlement with the underinsured motorist occurs. 749 F. Supp. at 662 ("This court holds that it is only at the time that Wheeler actually settled . . . with the underinsured motorist's insurance company . . . that the status of the situation as one involving an underinsured motorist was definitely ascertainable.").

The parties' arguments, which were submitted before Motorist Mutual was decided, address the Wheeler approach only. Rosenthal argues that the statute of limitations begins to run when the claim against Cashion settled while State Farm argues that it should be the date of the accident or alternatively when Rosenthal obtained reports from experts quantifying his loss to be over Cashion's policy limits.

Motorist Mutual, a court in this District held that the statute of limitations begins to run on a UIM claim when the insurer manifests disagreement over the insured's UIM claim. 2005 U.S. Dist. LEXIS 33752 at *10-12. The court noted that the insured's claim was for breach of contract, and that in contract actions, the statute of limitations begins to run when the contract is breached, not when the contractual rights vest. Id. at *10 n.16 (citing A.J. Aberman, Inc. v. Funk Bldg. Corp., 420 A.2d 594, 599 (Pa. Super. Ct. 1980)); see Romeo & Sons, Inc. v. Yezbak & Sons, Inc., 652 A.2d 830, 832 (Pa. 1995) ("[I]n an action for breach of contract the statute of limitations period begins to run from the time of the breach.") (internal quotations and citations omitted). In a case involving UIM benefits, the court reasoned, a breach occurs when the insurer first disputes the insured's claim. Id. at *6 n.8, *9 n.13, 11-12 (citing Zourelias v. Erie Ins. Group, 691 A.2d 963, 964 n.4 (Pa. Super. Ct. 1997) (explaining that a cause of action for a declaratory judgment does not arise or accrue until an "actual controversy" exists and finding that an "actual controversy" surrounding the interpretation of an insurance policy does not arise until the insurer declined the insured's request for coverage) and Berkshire Mutual Ins. Co. v. Burbank, 664 N.E.2d 1188, 1192 (Mass. 1996) (holding that the statute of limitations for commencing an action for UIM benefits begins to run when the insurer violates the insurance contract and citing cases from thirteen state appellate and supreme courts in support of its view)). The court determined that the statute of limitations thus began to run when the insured first learned of a disagreement, which was upon notice that the complaint for a declaratory judgment had been filed. Id. at *11-12.

This Court agrees. The limited facts before the Court reveal that Rosenthal's cause of action accrued in March 2005 when State Farm manifested its refusal to arbitrate by filing the

Complaint seeking declaratory judgment, thereby breaching the contract.[5] See, e.g., Berkshire Mutual, 664 N.E.2d at 1190 (determining that the cause of action accrues when the insurer refuses to arbitrate with the insured) (footnotes omitted); Spear v. California State Auto. Ass'n, 831 P.2d 821, 825 (Cal. 1992) ("While the parties subject to an arbitration condition are negotiating in good faith before submitting to arbitration, or are delaying negotiation and arbitration by mutual agreement, there is no breach of the contract. Rather, the contract is breached only when one party refuses to submit to arbitration. It is at that time the cause of action accrues."). The statute of limitations thus has not expired.[6]

IV. Conclusion

Accordingly, the Court finds that Rosenthal's UIM claim is not time-barred.[7] An appropriate Order follows.

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[5] Rosenthal first learned that State Farm disputed his UIM claim sometime between July 9, 2004 and July 22, 2004, causing his counsel to demand UIM arbitration. Until then, State Farm corresponded with him about his UIM claim and received status updates on his medical condition and approved the settlement with Cashion.

[6] The Court's holding will not allow an insured unreasonably to delay his demand and allow the claim to become stale. An insurer can itself compel arbitration. See Berkshire Mutual, 664 N.E.2d at 1192. The insurer can also deny UIM coverage if it proves that it was prejudiced by the late notice. Brakeman v. Potomac Ins. Co., 371 A.2d 193, 198 (Pa. 1977); see Berkshire Mutual, 664 N.E.2d at 1192.

[7] Because the Court finds that Rosenthal's claim is not time-barred, it will not address his estoppel argument.

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BRIAN D. ROSENTHAL	**:**	

ORDER

AND NOW, this 20th day of January, 2006, upon consideration of Defendant Brian D. Rosenthal's Motion to Dismiss (docket no. 5), which has been converted to a Motion for Summary Judgment,[1] and Plaintiff State Farm Automobile Insurance Company's Cross-Motion for Summary Judgment (docket no. 6), it is **ORDERED** that Defendant's Motion is **GRANTED** and Plaintiff's Motion is **DENIED** for the reasons stated in the accompanying Memorandum. Plaintiff's Complaint Seeking Declaratory Judgment is **DISMISSED** with prejudice. The Clerk of the Court shall mark this declaratory judgment action **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.

[1] Fed. R. Civ. P. 12(b) provides that if, on a motion to dismiss for failure to state a claim, "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Here, the Court considered matters outside the pleading that Defendant submitted in his motion to dismiss, including correspondence between the parties and expert reports. In addition, both parties were given a reasonable opportunity to present all pertinent materials after Plaintiff, in its response to Defendant's motion to dismiss, argued that Defendant's motion should be treated as one for summary judgment and then filed a cross-motion for summary judgment.